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*Attorneys for Plaintiffs and Proposed FLSA
Collective and California Class*

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

Luis Duque and Daniel Thibodeau,
individually, on behalf of others similarly
situated, and on behalf of the general
public,

Plaintiffs,

VS.

Bank of America, National Association,
and DOES 1-50,

Defendant.

Case No.: 8:18-cv-01298-PA-MRW

**PLAINTIFFS' NOTICE OF
MOTION AND UNOPPOSED
MOTION FOR PRELIMINARY
APPROVAL OF AMENDED CLASS
AND COLLECTIVE ACTION
SETTLEMENT**

Date: December 10, 2018

Time: 1:30 p.m.

Place: Courtroom 9A

Hon. Percy Anderson

PLAINTIFFS' NOTICE OF MOTION & UNOPPOSED MOTION FOR PRELIMINARY APPROVAL
OF AMENDED CLASS & COLLECTIVE ACTION SETTLEMENT; Case No. 8:18-cv-01298-PA-
MRW

1 NOTICE OF MOTION & MOTION TO THE COURT AND ALL INTERESTED PARTIES:

2 PLEASE TAKE NOTICE that a hearing will be held on Plaintiffs' Unopposed Motion
3 for Preliminary Approval of Amended Class and Collective Action Settlement on December
4 10, 2018 at 1:30 p.m. in the Courtroom of the Honorable United States District Court Judge
5 Percy Anderson, located at Courtroom 9A, 350 W. 1st Street, Los Angeles, CA,. At the
6 hearing, representative Plaintiffs Luis Duque and Daniel Thibodeau, through their attorneys
7 and on behalf of all others similarly situated, will and hereby do move the Court to:
8 preliminarily approve the \$1,950,000 Settlement between the Plaintiffs and Defendant Bank
9 of America, National Association; name Bryan Schwartz Law as Class Counsel and Messrs.
10 Duque and Thibodeau as Class Representatives; name Rust Consulting as the Claims
11 Administrator; authorize the mailing of notices to the California Class and Collective Action
12 Members; and schedule a final approval hearing date.

13 The Motion is based upon the Unopposed Motion for Preliminary Approval of
14 Amended Class And Collective Action Settlement and Memorandum of Points and
15 Authorities in Support Thereof; the Declaration of Bryan J. Schwartz, Esq. ("Schwartz
16 Decl."), in support of the motion, and the exhibits thereto, including the Amended Joint
17 Stipulation For Settlement and Release of Class and Collective Action Claims and the
18 Proposed Class and Collective Action Notices; the original Unopposed Motion for
19 Preliminary Approval of Amended Class And Collective Action Settlement and
20 Memorandum of Points and Authorities in Support Thereof (Dkt. #15) and all declarations
21 and exhibits filed in support thereof (Dkt. #'s 15-1 through 15-5); any oral argument of
22 counsel; the complete files, records, and pleadings in this matter; and such additional matters
23 as the Court may consider. A Proposed Order is submitted herewith.

24 Dated: November 8, 2018

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25 By: /s/ Bryan J. Schwartz
26 BRYAN J. SCHWARTZ
27 RACHEL M. TERP
28 DECAROL A. DAVIS
*Attorneys for the Proposed FLSA
Collective and California Class*

MEMORANDUM OF POINTS AND AUTHORITIES

This is a wage-and-hour class and collective action against Defendant Bank of America, National Association (“BANA”), brought by Client Advocates, Senior Client Advocates, Operations Consultants, and Senior Operations Consultants (“Advocates”) who BANA classified as exempt during the relevant period. Advocates process individual customer service inquiries from consumers, regulatory agencies, Attorneys General offices, non-profits, and other miscellaneous business channels. Plaintiffs seek preliminary approval of a proposed, amended \$1,950,000 settlement of this matter (the “Amended Settlement”) on behalf of approximately 321 employees who worked as Advocates nationwide. The Amended Joint Stipulation for Settlement and Release of Class and Collective Action Claims and the Proposed Class and Collective Notices are attached hereto as Exhibit A to the Schwartz Decl. (hereinafter “Exh. A”).

This unopposed motion incorporates by reference all of the arguments and information submitted in support of preliminary approval of the original settlement agreement. (Dkt. #15). The Court denied the original approval motion because the first settlement agreement had a procedure permitting back-of-the-check FLSA opt-ins, which this Court rejected on October 12, 2018. (Dkt. #21). Accordingly, the Parties worked to revise the settlement agreement and notices to the class, to eliminate this rejected mechanism, fully-executing the Amended Settlement on November 5, 2018. Declaration of Bryan Schwartz, Esq., in Support of Amended Settlement, at 3a. Now, the settlement requires individuals to consent-to-join explicitly before any approval hearing – Plaintiffs will file each consent-to-join with the Court. Exh. A, ¶ 71; Schwartz Dec., at 3b. Moreover, the Parties are providing more notice to the potential collective members (90 days, instead of 60) and providing reminders to facilitate their ability to opt-in to the collective. Exh. A, ¶ 71; Schwartz Dec., at 3c. Otherwise, the terms of the settlement remain unchanged.

For the same reasons argued in Plaintiffs' comprehensive preliminary approval briefing (Dkt. #15) and supported by declarations filed along with it, the settlement is

1 extremely advantageous to the Advocates and provides them far better results than they
2 might achieve absent the settlement, providing thousands of dollars on average, when
3 most would not recover anything absent the settlement. Accordingly, the Court should
4 approve the Amended Settlement, which addresses the particular opt-in mechanism
5 rejected previously by this Court, and allow the Notices to issue promptly.

6
7 Dated: November 8, 2018

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9 By: /s/ Bryan J. Schwartz
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*Attorneys for Plaintiffs and Proposed
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